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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/597,152	01/09/2007	Ewald Schmon	7400-X06-151	6818
27317 7590 05/20/2009 Fleit Gibbons Gutman Bongini & Bianco PL 21355 EAST DIXIE HIGHWAY SUITE 115 MIAMI, FL 33180			EXAMINER JONAITIS, JUSTIN M	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 05/20/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/597,152		SCHMON ET AL.	
	Examiner		Art Unit	
	JUSTIN JONAITIS		3752	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/13/2006, 05/11/2007, 05/22/2008 & 07/28/2008</u> . | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 3752

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 7 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent #4,210,263 to Bos.

In re claim 7, Bos discloses the use of a pointed tool (pin member (18)) with a shaft (cylindrical port, see Bos Figure 1), a head part (cylindrical top portion, See Bos Figure 1) arranged on the shaft, and a point (pointed portion, See Bos Figure 1) at the end of the shaft, on whose periphery at least one recess (See Bos Figure 1) is provided for puncturing a ventilation opening in the wall of a reservoir (bottle (16)), wherein after the ventilation opening has been punctured, the recess forms a ventilation channel when the pointed tool is pushed into the opening at a specific height.

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. In the current application, the use for a paint spray gun does not hold any patentable weight.

In re claim 9, Bos discloses the invention as described above including the recess extending in the longitudinal direction of the shaft that corresponds to approximately half the shaft

Art Unit: 3752

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1,2, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,536,687 to Navis et al in view of U.S. Patent #4,210,263 to Bos.

Art Unit: 3752

In re claims 1, 2, and 12, Navis et al. discloses a flow reservoir for a paint gun with a container (cup (12)) and a cover (first adapter (20)) that can be set on the container and that has an attachment part (groove (32) that is adapted for sealing engagement with the mixing cup) for setting the flow reservoir on the paint spray gun, characterized in that the a defined region (passageway (58)) is formed in the wall (side wall (13)) of the container for forming a ventilation opening.

Navis et al. discloses that the use of a ventilation opening for a reservoir is known, however Navis does not specifically disclose the defined region being punctured by a pointed tool with the pointed tool having a shaft, head part, and at least one recess which forms a ventilation channel when the pointed tool is pushed into the opening far enough.

Bos discloses that it's known to provide a pointed tool for puncturing a defined region of a bottle in order to provide pressure equalization. The pointed tool disclosed by Bos (as best seen in figure 1) includes a head (spherical top portion), a shaft (cylindrical portion), and a point (at the end of the shaft) who's periphery has a recess provided to form a ventilation channel when the pointed tool is pushed into the opening far enough. The defined region of Bos is more easily punctured because it is located on a flat portion.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a puncture tool as disclosed by Bos since Bos states that an aperture in the base of the bottle by a pin member would allow for pressure equalization required to move a fluid [column 2, lines 57-59]

7. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,536,687 to Navis et al in view of U.S. Patent #4,210,263 to Bos in further view of U.S. Patent #6,692,118 to Michele et al.

Art Unit: 3752

In re claim 3, Navis et al. in view of Bos discloses the invention as described above but fails to disclose the defined region being formed by a membrane which consists of a material with lower thickness than that of the container wall.

Michele et al. however teaches that it is known to use a membrane which has a lower thickness than the surrounding walls so the region can be more easily punctured. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a thin membrane as taught by Michele et al., since Michele et al. states at column 6, Lines 36-67 that such modification would allow a pointed tool to pierce through the a seal to access a reservoir.

In re claims 4-6, Navis et al. in view of Bos discloses the invention as described above but fails to disclose the defined region being bordered by a guidance surface which guides the pointed tool when the ventilation opening is being punctured, where the guidance surface is formed by the inner side wall of a hollow cylinder standing essentially perpendicular to the container wall, and hollow cylinder projecting into the interior of the container.

Michele et al. teaches that it is known to use a hollow cylinder (mounting element (5) is cylindrical in shape) with a bore within it, where the guidance surface (side walls of mounting element's bore) function to keep the piercing element within the area that contains the defined region (piercing area (8)), where the hollow cylinder is perpendicular to the container wall (liquid outlet (2) forms part of the container wall and extends into the interior of the chamber (fits inside the liquid outlet (2))).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to include guidance surfaces as disclosed by Michele et al. since such modification would allow the pointed tool to more accurately be placed in order to form the ventilation opening.

Art Unit: 3752

8. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #4,210,263 to Bos in view of U.S. Patent #6,536,687 to Navis et al..

Bos discloses the invention as described above including the shaft being cylindrical. Bos fails to disclose the entire shaft extending conically.

Navis et al. however teaches that a pointed tool with a shaft that is extends conically is known. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a pointed tool with a shaft that extends conically as taught by Navis et al. as such modification would allow for sealing a ventilation area when the tool was pushed completely into the ventilation aperture.

9. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #4,210,263 to Bos in view of U.S. PG-Pub 2003/0121476 to McIntyre et al.

Bos discloses the invention as described above but fails to include the recess is formed between two circular catch edges.

McIntyre et al. teaches that it is known to use a two circular catch edges (widening of section (16) and the widened head (12)) with a recess (channel (13)) located between them. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use two circular catch edges with a recess located between them as taught by McIntyre et al., since McIntyre et al. states in paragraph [0019] that such modification would allow the element to be inserted into the device with some force and once inserted would be retained in the hole.

Art Unit: 3752

10. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent #6,536,687 to Navis et al in view of U.S. Patent #4,210,263 to Bos in further view of U.S. Patent #5,582,350 to Kosmyna et al.

11. Navis in view of Bos discloses the invention as described above but fails to disclose the pointed tool being attached to the cover by a tear-off bracket.

12. Kosmyna et al. teaches that it is known to use a tear-off bracket (tether (68) is capable of being torn off).

13. It would have been obvious to one having ordinary skill in the art at the time the invention was made to include a tear-off bracket as disclosed by Kosmyna et al. as such bracket would allow the tool to be retained by the container's cover, and torn off to be used to create the ventilation hole.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. U.S. Patent #7,416,140 to Camilleri et al. discloses a disposable container for a paint gun with similar structure and components. U.S. Patent #5,954,268 to Joshi et al. discloses a fluid delivery system which punctures a membrane. U.S. Patent #6,553,712 to Majerowski et al. discloses a fluid reservoir which pierces a membrane and has guide surfaces. U.S. Patent #2,559,091 to Reasenbergs discloses a container which pierces a membrane.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JUSTIN JONAITIS whose telephone number is (571)270-5150. The examiner can normally be reached on Monday - Thurs 6:30am - 5:00 pm EST.

Art Unit: 3752

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on (571)272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JUSTIN JONAITIS/

Examiner, Art Unit 3752

/Len Tran/

Supervisory Patent Examiner, Art Unit 3752